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March 6, 2003

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: DTE 02-45 — Global NAPs/VZN Arbitration

Dear Ms. Cottrell:

I am responding to Verizon's letter of March 3, 2003, in which it claims that Global NAPs, Inc. ("Global NAPs") failed to comply with the Department's directive to sign the Final Arbitration Agreement ("FAA") that the Department approved in its order of February 19, 2002.

Global NAPs believes that it has complied with the Department's directive. It has signed the FAA. The only dispute relates to Global NAPs' reservation of its rights with respect to certain aspects of the FAA that purport to authorize Verizon to take actions that violate federal law in a manner that transcends the entire Section 251/252 process. Global NAPs does not understand even Verizon to contend that the Department has the power, under Sections 251/252 or otherwise, to authorize Verizon to violate FCC requirements under Section 201 of the Communications Act. It follows that Global NAPs has rights with respect to those prospective violations of federal law that go beyond the process of court review of claims that, *e.g.*, certain Department rulings might misapprehend how Sections 251/252 are intended to operate.

The issue in dispute should be clear. Briefly, however, the problem is that the FAA treats an ISP-bound call as terminating at the location of the ISP and makes intercarrier compensation — specifically, payment of originating intrastate access charges — dependant on treating the ISP's location as a meaningful "end point" of the calls. This is the two-call theory rejected by the FCC in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, Memorandum Opinion and Order, 16 F.C.C.R. 9151 (2001) ("*ISP Remand Order*"). In fact, precisely because the FCC does not view calls to ISPs as meaningfully "terminating" at the ISPs' premises, the "LEC-provided link between the end-user and an ISP is properly characterized as *interstate* access." *Id.* at ¶ 57 (emphasis in original).

Access charges — whether interstate or intrastate — paid with respect to ISP-bound traffic would unquestionably be a form of intercarrier compensation. Yet intercarrier compensation for ISP-bound traffic is precisely the field which the FCC preempted in the *ISP Remand Order*. *Id.* at ¶ 82. So Verizon is clearly wrong on the merits to say that it has the right to receive intrastate access charges for ISP-bound traffic originating with a Verizon end user, handed off directly from Verizon to Global NAPs, and then delivered to an ISP. But if Verizon wants to argue that it has such a right, the *only* regulator empowered to authorize Verizon to receive such payments is the FCC. This is why Global NAPs needs and is entitled to a distinctive reservation of rights with respect to this specific issue.¹

Global NAPs is at something of a loss to understand Verizon's shrill tone on this issue. Global NAPs is not asking Verizon to in any way concede that Global NAPs is correct on the merits of any substantive issue. Global NAPs is not asking Verizon to concede that any particular issue is, or is not, appropriately within the exclusive jurisdiction of the FCC. Global NAPs is not asking Verizon to concede anything at all, in fact, other than what is evident: that Global NAPs and Verizon have a dispute about the scope of the FCC's preemption of the issue of intercarrier compensation for ISP-bound traffic. Verizon may think that Global NAPs misunderstands the law, but it utterly blinks reality for Verizon to suggest that the disagreement itself does not exist. The language at issue simply recognizes that reality.

Please do not hesitate to contact me if you have any questions about this matter.

Respectfully Submitted,

Christopher W. Savage

cc: Bruce Beausejour
Keefe Clemons

¹ The reservation of rights Global NAPs appended to its signature is carefully limited in this way:

Global NAPs, Inc. signs this agreement under protest. The FCC has held that ISP-bound traffic is jurisdictionally interstate in nature and is subject to an FCC-mandated inter-carrier compensation mechanism. As a result, state regulators no longer have authority to consider the issue of inter-carrier compensation for ISP-bound calls, and that the *issue is no longer* a fit subject for inclusion in interconnection agreements. In *the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (Apr. 27, 2001) ("*ISP Remand Order*") ¶ 82. Accordingly, any portions of this Agreement that purport to control inter-carrier compensation for ISP-bound traffic are without effect. Global NAPs, Inc. also reserves all appellate rights.